Hovsepian v. Apple, Inc.
Doc. 293 Att. 8

Exhibit I

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: ACACIA MEDIA TECHNOLOGIES CORPORATION.	)	C-05-01114-JW
	)	SEPTEMBER 14, 2006
____________________	)	PAGES 1-150

THE PROCEEDINGS WERE HELD BEFORE

THE HONORABLE UNITED STATES DISTRICT

JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: HENNIGAN, BENNETT & DORMAN
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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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SAN JOSE, CALIFORNIA SEPTEMBER 14, 2006

P R O C E E D I N G S

(WHEREUPON, COURT CONVENED AND THE FOLLOWING PROCEEDINGS WERE HELD:)

00:10:44 THE CLERK: CALLING THE ACACIA MATTER.
00:10:46 COUNSEL, PLEASE STEP FORWARD AND STATE
00:10:48 YOUR APPEARANCES.

00:10:48 MR. DORMAN: GOOD MORNING, YOUR HONOR.
00:10:49 ROD DORMAN AND ALAN BLOCK FOR ACACIA PLAINTIFFS.

00:10:56 MR. BENYACAR: GOOD MORNING, YOUR HONOR.
00:10:57 DAVID BENYACAR FOR DEFENDANT TIME WARNER CABLE,
00:11:01 INCORPORATED.

00:11:06 MS. DURIE: GOOD MORNING, YOUR HONOR,
00:11:08 DARALYN DURIE FROM KEKER & VAN NEST FOR COMCAST.

00:11:14 MR. KREEGER: GOOD MORNING. MATTHEW
00:11:16 KREEGER FROM MORRISON & FOERSTER AND WITH ME IS A
00:11:21 COLLEAGUE OF MINE DAVID HYMAS WHO WILL HAVE A
00:11:23 SPEAKING ROLE TODAY.

00:11:25 MR. WONG: GOOD MORNING. CHARLES WONG OF
00:11:27 JONES DAY ON BEHALF OF DIRECT T.V.

00:11:36 MR. DEAN: GOOD MORNING, YOUR HONOR.
00:11:37 JEFFREY DEAN OF MARSHALL, GERSTEIN & BORUN ON
00:11:39 BEHALF OF CHARTER COMMUNICATIONS AND 12 OTHER
00:11:45 COMPANIES.

00:11:45 THE COURT: VERY WELL. THIS IS A

IN TERMS OF, IN TERMS OF, OF, YOU KNOW, IF WE WERE REWRITING IT BUT MY UNDERSTANDING IS THAT BECAUSE HE'S PUTTING THAT UP THERE, HE'S JUST INDICATING THAT, YOU KNOW, THE TRANSMISSION ONLY OCCURS AFTER THE STUFF HAS BEEN RECEIVED IN RESPONSE AND IT RELATES TO THE SUBJECT MATTER THAT WAS STORED. THAT'S HOW I UNDERSTOOD IT.

THE COURT: OKAY. ALL RIGHT. WELL, I HAVE HEARD ENOUGH ON THIS SO LET'S MOVE ON.

MR. BLOCK: YOUR HONOR, OUR NEXT TERM RESIDES IN CLAIM 17 OF THE '863 PATENT AND THERE ARE ACTUALLY TWO ISSUES INVOLVING THE USING PHRASE. SO WE'RE TALKING ABOUT AFTER THE MATERIAL HAS BEEN TRANSMITTED FROM THE CENTRAL PROCESSING LOCATION, IT'S BEEN RECEIVED AT THE LOCAL DISTRIBUTION SYSTEM, IT'S BEEN STORED THERE, AND NOW THE NEXT STEP IN 17 THERE IS USING THE STORED COMPRESSED DIGITIZED DATA TO TRANSMIT A REPRESENTATION OF THE AT LEAST ONE ITEM AND THEN THERE'S AN ERROR HERE, IT SAYS TO AT A PLURALITY OF SUBSCRIBER RECEIVING STATIONS COUPLED TO THE LOCAL DISTRIBUTION SYSTEM.

AND THE TWO ISSUES ARE WHETHER THIS WORD USING TO TRANSMIT IS AN INDEFINITE, IT'S THE ROUND TWO DEFENDANTS' POSITION.

AND THE OTHER ISSUE IS WHETHER THIS

MISTAKE OF TO AND AT A PLURALITY RENDERS THIS PHRASE INDEFINITE WHICH IS THE ROUND THREE DEFENDANTS' POSITION.

COULD I PUT UP 262, PLEASE. I'M GOING TO ADDRESS FIRST THE USING ISSUE. THIS IS THE PHRASE AGAIN IN CLAIM 17 THAT WE'RE TALKING ABOUT USING STORED COMPRESSED DIGITIZED DATA TO TRANSMIT A REPRESENTATION OF THE AT LEAST ONE ITEM.

SO WHAT THE CLAIM IS REALLY SAYING AND MAKING CLEAR TO PERSONS OF SKILL IN THE ART IS THAT THE DATA IS BEING EMPLOYED AS A MEANS TO TRANSMIT AT LEAST ONE ITEM OF INFORMATION.

THE COURT: WHAT DATA?

MR. BLOCK: THE STORED COMPRESSED DIGITIZED DATA.

THE COURT: WHAT IS THAT? THAT GOES BACK TO MY EARLIER QUESTION, WHAT IS THAT? IS THAT THE, IS THAT THE AUDIO/VIDEO INFORMATION THAT YOU REALLY WANT TO TRANSMIT OR IS THAT SOMETHING ELSE?

MR. BLOCK: IT'S THE INFORMATION THAT YOU WANT TO TRANSMIT. IT'S THE DATA THAT WAS TRANSMITTED FROM THE CENTRAL PROCESSING LOCATION TO THE LOCAL DISTRIBUTION SYSTEM AND THEN STORED IN ITS ENTIRETY AT THE LOCAL DISTRIBUTION SYSTEM.

AND NOW WE'VE GOT TO GET IT FROM THE

LOCAL DISTRIBUTION SYSTEM, TO THE SUBSCRIBER RECEIVING STATIONS AND THIS IS THE STEP THAT TELLS US THAT THAT OCCURS.

IT SAYS USING THE STORED COMPRESSED DATA TO TRANSMIT A REPRESENTATION OF THE ITEM. SO IT'S SAYING, HEY, WE HAVE GOT THIS DATA NOW AND THIS IS THE DATA WE'RE GOING TO USE TO TRANSMIT THE ITEM OF INFORMATION.

CAN YOU GO BACK TO 17?

IT ALSO MAKES CLEAR TO THE READER THAT THERE'S MORE THAN ONE INSTANCE WHERE THIS COMPRESSED DIGITIZED DATA APPEARS. IT APPEARS IN THE FIRST STEP WHERE YOU'RE FORMATTING THE ITEMS AS COMPRESSED DIGITIZED DATA AND THEN FROM THE CENTRAL PROCESSING LOCATION YOU ALSO HAVE COMPRESSED DIGITIZED DATA. YOU'RE RECEIVING THAT AT THE LOCAL DISTRIBUTION SYSTEM AND YOU'RE STORING COMPRESSED DIGITIZED DATA AT THE LOCAL DISTRIBUTION SYSTEM.

THIS MAKES CLEAR TO THE READER WHICH OF THOSE DIFFERENT COMPRESSED DIGITIZED DATA IS BEING USED TO MAKE THIS TRANSMISSION.

THE COURT: WHICH?

MR. BLOCK: IT'S THE ONE THAT HAS BEEN STORED AT THE LOCAL DISTRIBUTION SYSTEM.

THE COURT: AREN'T THEY ALL THE SAME?

MR. BLOCK: WELL, THEY'RE THE SAME BUT THEY'RE IN DIFFERENT PARTS OF, OF THE STEP. SO HERE THE COMPRESSED DIGITIZED DATA IS AT THE CENTRAL PROCESSING LOCATION. HE COULD HAVE KEPT A COPY THERE AND IT'S SAYING DON'T TRANSMIT THAT ONE TO THE SUBSCRIBER RECEIVING STATION, TRANSMIT THE ONE THAT IS STORED AT THE LOCAL DISTRIBUTION SYSTEM.

THE COURT: OR USE THE ONE THAT IS STORED.

MR. BLOCK: USE THE ONE, RIGHT.

THE COURT: SO IT'S INTERESTING THAT THE PATENTEE USED THE WORD USING AS OPPOSED TO TRANSMITTING WITH RESPECT TO THE STORED COMPRESSED DIGITAL DATA.

I TAKE YOUR POINT HAVING TO DO WITH STORED, IN OTHER WORDS, THAT MODIFIES WHAT PORTION OF THE COMPRESSED DIGITIZED DATA YOU'RE USING, THE PART THAT HAS BEEN STORED.

MR. BLOCK: RIGHT.

THE COURT: BUT I -- WHAT IS YOUR EXPLANATION FOR THE TERM USING?

MR. BLOCK: AGAIN, IT'S TELLING YOU WHAT DATA I'M USING TO TRANSMIT. HE'S SAYING EMPLOY THAT DATA TO TRANSMIT THE REPRESENTATION OF THE

ITEM.

THE COURT: SO YOU'RE EMPLOYING THAT INFORMATION TO TRANSMIT A REPRESENTATION OF SOMETHING IN THAT INFORMATION?

MR. BLOCK: RIGHT.

THE COURT: OKAY.

MR. BLOCK: NOW, THE OTHER ISSUE IN THIS PHRASE -- WOULD YOU GO TO 269, PLEASE. JUST TO MAKE SURE THAT WE UNDERSTAND THE LAST PART. THE ITEM MAKES UP THE ENTIRE WORK AND SO THAT THE DATA THAT IS BEING USED TO TRANSMIT THAT ITEM COMMUNICATES THAT ENTIRE DATA IS BEING USED TO TRANSMIT THE ITEM FROM THE USING PHRASE I'M TALKING ABOUT.

THE COURT: YEAH, I HEARD YOU.

MR. BLOCK: SO THE OTHER ISSUE NOW ON THE USING PHRASE IS WHETHER OR NOT THAT THE PHRASE HAS TO TRANSMIT AND TO AT A PLURALITY OF SUBSCRIBER RECEIVING STATIONS.

IT'S CLEARLY A MISTAKE AND IT WASN'T INTENDED, HOWEVER, IT DOESN'T RENDER THIS CLAIM PHRASE INDEFINITE BECAUSE ON ITS FACE IT'S CLEAR THAT WHAT IS BEING COMMUNICATED IS THE TRANSMISSION OF DATA TO THE PLURALITY OF SUBSCRIBER RECEIVING STATIONS. IT DOESN'T USE THE WORD ONE; IT DOESN'T

SAY AT LEAST ONE. WHAT IT SAYS IS A PLURALITY. SO NEXT SLIDE.

SO A PERSON OF ORDINARY SKILL IN THE ART READING THIS CLAIM PHRASE IN LIGHT OF THE SPECIFICATION WOULD HAVE UNDERSTOOD THE CLAIM TO MEAN A REPRESENTATION OF THE AT LEAST ONE ITEM OF INFORMATION IS TRANSMITTED SUCH THAT IT IS RECEIVED BY A PLURALITY OF SUBSCRIBER RECEIVING STATIONS.

WOULD YOU GO TO 272.

THE COURT: SHOULD I WORRY ABOUT PLURALITY IN THAT?

MR. BLOCK: NO, AND I WAS JUST GOING TO GET TO THAT, YOUR HONOR.

THE COURT: OH.

MR. BLOCK: THE SPECIFICATION DOES DISCLOSE TRANSMITTING TO A PLURALITY OF USERS AND THE '863 PATENT IN COLUMN 4, LINE 51 TO 56 IT TALKS ABOUT FIGURE 1G THAT WE LOOKED AT EITHER THIS MORNING AND IT SAYS IT PREFERABLY TRANSMITS REQUESTED MATERIAL OVER AIRWAVE COMMUNICATION CHANNELS 200D TO A PLURALITY OF USERS.

SO TRANSMITTING INFORMATION TO A PLURALITY OF USERS IS DISCLOSED IN THE SPECIFICATION.

THE COURT: WHAT DOES IT MEAN, THOUGH,

MULTIPLE OR -- WHAT IS PLURALITY?

MR. BLOCK: MORE THAN ONE.

AND, YOUR HONOR, UNLESS YOU HAVE ANY QUESTIONS, I'M PREPARED TO ALLOW THE DEFENDANTS TO ARGUE.

THE COURT: ALL RIGHT.

MR. WONG: CHARLES WONG WITH JONES DAY.

OKAY. OUR STEP -- OUR POSITION IS THAT THE STEP OF USING THE STORED COMPRESSED DIGITIZED DATA TO TRANSMIT A REPRESENTATION OF THE AT LEAST ONE ITEM IS INDEFINITE BECAUSE ONE OF SKILL IN THE ART CANNOT UNDERSTAND WHAT AFFIRMATIVE ACT IS COVERED BY THIS METHOD STEP.

CAN WE GO TO THE NEXT SLIDE.

THIS SLIDE SHOWS CLAIM 17 AND AS MR. BLOCK HAS GONE OVER IT. IT TALKS ABOUT THE DATA BEING TRANSFERRED FROM THE CENTRAL PROCESSING LOCATION TO THE LOCAL DISTRIBUTION SYSTEM AND THEN SUBSEQUENTLY TO THE SUBSCRIBER RECEIVING STATIONS.

NOW, THE ONLY POINT I WANT TO MAKE HERE IS THAT THIS USING THE STORED COMPRESSED STEP OF USING THE STORED COMPRESSED DIGITIZED DATA OCCURS AT THE LOCAL DISTRIBUTION SYSTEM. IT IS NOT AT THE TRANSMISSION SYSTEM OR AT THE SUBSCRIBER LOCATION.

NEXT SLIDE, PLEASE.

SO TAKING A CLOSER LOOK AT THE, AT THIS STEP, AND I MIGHT ADD THIS USING STEP IS ALSO FOUND IN CLAIM 11 OF THE '720 PATENT BUT THEY'RE IDENTICAL IN RELEVANT PARTS FOR THE ISSUE HERE.

NOW, THE POINT I WOULD LIKE TO MAKE HERE IS THE USING, THIS STEP REQUIRES THAT, THAT THE ELEMENT THAT IS ACTUALLY TRANSMITTED TO THE SUBSCRIBER RECEIVING STATIONS IS THE REPRESENTATION OF THE AT LEAST ONE ITEM.

IT'S NOT THE STORED COMPRESSED DIGITIZED DATA. IT'S NOT THE ITEM. IT'S THE REPRESENTATION OF THE AT LEAST ONE ITEM.

AND UNDER THE RULES OF CLAIM CONSTRUCTION, WE SHOULD TREAT THESE ELEMENTS AS LISTING THE SAME THINGS.

SO MR. BLOCK SAYS THEIR POSITION IS THAT THE CLAIM MAKES IT CLEAR. JUST SEND THE STORED COMPRESSED DIGITIZED DATA. THAT'S WHAT THIS STEP MEANS. BUT THAT'S NOT WHAT THE CLAIM SAYS.

IT SAYS TO USE THE STORED COMPRESSED DIGITIZED DATA AND SEND THE REPRESENTATION OF THE AT LEAST ONE ITEM.

SO WHAT DOES THIS ALL MEAN? WE ALL READ THE PATENT AND WE KNOW THE PATENT TALKS ABOUT PROCESSING DIFFERENT MATERIALS AND MAYBE A MOVIE, COMPRISES ALL OF THESE POSITIVE ACTIVE STEPS. AND THAT'S THE DIFFERENCE BETWEEN THIS CLAIM AND ERLICH.

THE COURT: YEAH, I UNDERSTAND BOTH SIDES HERE. IN OTHER WORDS, IF I CONSTRUE A STEP COMPRISING USING THE STORED COMPRESSED DIGITIZED DATA TO TRANSMIT, I DON'T KNOW HOW IT'S USED, AND THAT MAY ARGUABLY BE USED IN DIFFERENT WAYS, BUT IF I INTERPRET USING IT DERIVING FROM THAT THE INFORMATION TO BE TRANSMITTED, I UNDERSTAND ITS UTILITY IN THE CLAIM.

MR. BLOCK: OKAY. VERY WELL.

MR. DORMAN: YOUR HONOR, THE ONE FINAL POINT ON THAT, IT IS OUR CONTENTION THAT THAT, THAT THAT ELEMENT, IF IT WERE, WOULD BE IDENTICAL, IF IT WERE REWRITTEN, TO SAY TRANSMITTING A REPRESENTATION OF THE AT LEAST ONE ITEM TO A PLURALITY OF SUBSCRIBER RECEIVING STATIONS COUPLED TO THE LOCAL DISTRIBUTION SYSTEM USING THE STORED COMPRESSED DIGITIZED DATA.

THE COURT: I AGREE THAT THAT WOULD LEAVE YOU IN THE SAME POSITION THAT YOU'RE IN NOW, NAMELY, IT WOULD ALLOW ME TO INTERPRET, IT WOULD REQUIRE THAT I INTERPRET HOW IT'S USED OR WHETHER -- HOW IT'S USED.

IS IT USED TO TRANSMIT? DO I DERIVE INFORMATION FROM THAT TO ALLOW ME TO TRANSMIT OR DO I DERIVE INFORMATION FROM THAT AS THE INFORMATION WHICH IS TRANSMITTED?

MR. DORMAN: ANOTHER EXAMPLE THAT MAY BE HELPFUL ABOUT, AND WHEN YOU USE THE WORD DERIVE, IF, IF I WERE TO SAY USING A PHOTO TO SEND AN IMAGE OF THE KIDS TO GRANDMA, IT WOULD BE CLEAR WHAT I WOULD BE DOING.

THE COURT: EXACTLY. BECAUSE A PHOTO, AN IMAGE MIGHT RELATE BUT THAT STORED COMPRESSED DIGITIZED DATA COULD BE DATA WHICH WOULD CONTAIN INFORMATION INSTRUCTING THE COMPUTER ON HOW TO TRANSMIT.

A PHOTO BY DEFINITION COULD NOT CONTAIN INSTRUCTIONS. THE REASON THAT THIS IS ARGUABLY A PROBLEM FOR YOU ALL IS THAT, IS THAT STORED DIGITAL DATA COULD BE DATA THAT COULD DO ANYTHING. IT COULD BE THE INFORMATION. IT COULD TELL YOU HOW TO USE THE INFORMATION BECAUSE IT'S DATA.

IT DOES SEEM TO ME THAT BEFORE I ACCEPT THE USING IT AS A METHOD TO CONTROL TRANSMISSION, SOMEHOW I WOULD HAVE TO SEE A STEP ABOVE WHICH WOULD PUT WITHIN THAT STORED DIGITAL DATA THOSE INSTRUCTIONS, AND I DON'T SEE THAT.

ALL THAT, ALL THAT THE DIGITAL DATA IS CALLED OUT IS THE, IS THE AUDIO VIDEO INFORMATION. IT DOESN'T CONTAIN ANY INSTRUCTIONS ON TRANSMISSION SO I CONSISTENTLY, PERHAPS I SHOULD INTERPRET IT WITH ACACIA'S DEFINITION IN MIND BECAUSE THERE'S NO SUGGESTION THAT THAT STORED COMPRESSED DIGITAL DATA IS ANYTHING OTHER THAN THE ITEMS OF INFORMATION.

MR. DORMAN: THE OTHER THING TO YOUR POINT, YOUR HONOR, IS THAT ONE OF ORDINARY SKILL IN THE ART WOULD KNOW YOU DON'T COMPRESS INSTRUCTIONS, YOU ONLY COMPRESS CONTENT.

THE COURT: OH, I WOULD ARGUE WITH THAT. IN OTHER WORDS, YOU COULD COMPRESS ALL KINDS OF THINGS DIGITALLY AND ON THE UNCOMPRESSED SIDE THOSE INSTRUCTIONS MIGHT SAY DISPLAY THE COLOR OF BLUE. BUT YOU CAN COMPRESS DISPLAY THE COLOR BLUE WHEN YOU SEND THE INFORMATION OUT BECAUSE THAT GETS UNCOMPRESSED AND THE PATENT.

MR. DORMAN: BUT WHAT THIS PATENT TALKS ABOUT WHEN IT TALKS ABOUT COMPRESSING, IT'S COMPRESSING, IT'S COMPRESSING CONTENT, AUDIO VIDEO, THAT'S WHAT THIS TEACHES.

THE COURT: I UNDERSTAND. I'VE GOT THAT POINT.

MR. WONG: THERE ARE MANY DIFFERENT WAYS

THAT THE COURT IS ENVISIONING OF HOW THIS WORD USING COULD BE APPLIED AND WHAT COULD BE DONE WITH THE COMPRESSED DIGITIZED STORED DATA AND I THINK IT DEMONSTRATES THE SUFFICIENCY OF THE WORD USING. WE JUST DON'T KNOW WHAT YOU'RE SUPPOSED TO DO WITH THAT.

AND ACACIA IS ASKING US, WELL, LET'S, LET'S MAKE IT MEAN, WE'RE GOING TO DERIVE THE REPRESENTATION OF THE ITEM FROM THE STORED COMPRESSED DATA AND SEND IT.

AND AS YOU SAID, YOU KNOW, PERHAPS THERE IS INFORMATION IN THERE THAT, THAT MAKES IT, MAKES THE, MAKES THE, MAKES THE -- TRIGGERS THE TRANSMISSION BUT, NO, ACACIA SAYS THE SAME THING. IT'S THE COMPLETE ITEM.

SO THEY'RE STILL TALKING ABOUT HAVING THE MOVIE IN ITS COMPRESSED FORM AND SENDING THE MOVIE. AND AGAIN A PERSON OF SKILL IN THE ART WOULD SIMPLY SAY TRANSMIT THE STORED COMPRESSED DIGITIZED DATA. THEY DON'T GET COMPLICATED AND START ADDING THESE NEW TERMS AND, AND, AND RAISING AMBIGUITY THAT, THAT IS, WELL, SUBSEQUENTLY NOT CLEARED UP IN THE SPECIFICATION.

THE COURT: IT PARALLELS THE PROBLEM IN CLAIM 14 AS I SEE IT, THE IN RESPONSE TO THE STORED

COMPRESSED DIGITIZED DATA TRANSMITTING A REPRESENTATION IS SIMILAR TO THE PROBLEM YOU'RE PRESENTING TO ME WITH USING IT TO TRANSMIT.

NOW, AT LEAST IN CLAIM 14 THEY DO DISCLOSE A TRANSMITTING STEP. IN RESPONSE TO THIS I'M TRANSMITTING SOMETHING. IN THE USING STEP IT DOESN'T SAY TRANSMITTING ANYTHING BUT I'M ASKED TO READ TO TRANSMIT AS TRANSMITTING AS A STEP COMPRISING THAT STEP OF TRANSMITTING. AND SO I SEE THE PROBLEM. I DON'T NEED TO HEAR MORE ON THIS.

MR. WONG: THANK YOU.

MR. BENYACAR: I'D LIKE TO FOCUS ON A DIFFERENT ASPECT OF THIS LIMITATION WHICH IS THE REQUIREMENT THAT YOU TRANSMIT TO AT LEAST A PLURALITY OF SUBSCRIBER RECEIVING STATIONS.

NOW, IN HIS OPENING REMARKS ON THIS MR. BLOCK SAID THAT IT'S IN ERROR AND IT IS A MISTAKE WHICH WAS NOT INTENDED.

WELL, THE QUESTION IS WHAT WAS INTENDED? AND, AND WHAT I SHOW UP HERE IS AT LEAST TWO OPTIONS, ONE IS THAT THE TRANSMISSION BE TO A PLURALITY OF SUBSCRIBER RECEIVING STATIONS SO THAT MORE THAN ONE SUBSCRIBER RECEIVING STATION WOULD RECEIVE THE TRANSMISSION AND YOU WOULD ACHIEVE THAT BY REMOVING THE WORD "AT" FROM THE CLAIM.

ANOTHER OPTION IS THAT IT WAS INTENDED TO SAY TRANSMIT TO AT LEAST ONE OF A PLURALITY OF SUBSCRIBER RECEIVING STATIONS SO THERE WOULD BE A PLURALITY MORE THAN ONE SUBSCRIBER RECEIVING STATIONS BUT IT WOULD BE OKAY IF ONLY ONE OF THOSE RECEIVED IT.

NOW, I JUST WANT TO POINT OUT THAT, THAT IN THE CORRESPONDING LIMITATION OR THE GENERALLY CORRESPONDING LIMITATION FROM, FROM CLAIM 14, CLAIM 14 SAYS TRANSMITTING A REPRESENTATION TO AT LEAST ONE OF A PLURALITY OF SUBSCRIBER RECEIVING STATIONS. AND THIS IS, THIS IS AT COLUMN 21, LINE 46, APPROXIMATELY.

SO CLAIM 41 WAS TO AT LEAST ONE OF A PLURALITY. THAT WAS CLAIM 14. SO WHAT WAS INTENDED IN CLAIM 17? WAS IT INTENDED TO BE THE SAME AS CLAIM 14 WHICH IS AT LEAST ONE OF OR WAS IT CLAIMED TO BE DIFFERENT THAN CLAIM 14? AND THE WORD "AT" WAS MISTAKENLY PUT IN SO IT'S ACTUALLY SENT TO A PLURALLY? THERE'S NO WAY TO KNOW. THERE'S NO WAY TO KNOW WHAT WAS INTENDED AND WE CITE THE NOVO INDUSTRIES CASE UP HERE BECAUSE THE COURT CANNOT BE REQUIRED TO GUESS AS TO WHICH ONE WAS INTENDED. IF THERE'S NO WAY TO KNOW THEN THE CLAIM IS INDEFINITE.

AND NOVO ALSO EXPRESSLY SAID THAT IT'S JUST AS LIKELY WORDS WERE INTENDED TO BE ADDED AS IT WAS THAT WORDS WERE REQUIRED TO BE CHANGED OR DELETED. SO THERE'S NO PRESUMPTION THAT WHAT WAS INTENDED WAS TO REMOVE WORDS RATHER THAN ADD THEM. SO BECAUSE THERE'S NO WAY TO KNOW WHAT WAS INTENDED, BECAUSE THE CLAIM WOULD HAVE A DIFFERENT SCOPE UNDER EITHER ONE OF THOSE, THE CLAIM IS INDEFINITE.

THANK YOU.

MR. BLOCK: PUT BACK 14 OR I'M SORRY 17.

THE PHRASE IS TO A PLURALITY. THERE'S NOTHING ABOUT ONE OR AT LEAST. IT SAYS A PLURALITY. THAT'S WHAT IT SAYS AND THAT'S WHAT ONE OF ORDINARY SKILL IN THE ART READING THIS CLAIM WOULD UNDERSTAND IT TO MEAN.

THE COURT: WELL, YOU MUST ADMIT THAT, THAT CLAIM 14 CONTAINS SOME OF THOSE WORDS IT'S TO AT AND THEN, AND THEN IT'S PHRASED AT LEAST ONE OF AND SO PERHAPS AT LEAST ONE OF WAS LEFT OUT IS THE SUGGESTION.

WHY ISN'T THAT JUST AS PLAUSIBLE THAT AT WAS PUT IN INCORRECTLY?

MR. BLOCK: THEY'RE EQUALLY PLAUSIBLE, HOWEVER, THIS IS WHAT IT SAYS AND THIS IS WHAT WE

HAVE TO DEAL WITH. PLURALITY OF SUBSCRIBER STATEMENT IS DISCLOSED IN THE SPECIFICATION. THE ISSUE FOR THE COURT IS WHETHER ONE OF ORDINARY SKILL IN THE ART READING THIS CLAIM PHRASE WOULD BE ABLE TO UNDERSTAND WHAT IT MEANS IN LIGHT OF THE SPECIFICATION.

THE COURT: WELL, IS THERE A DIFFERENCE IN THE SPECIFICATION THAT I COULD TRACE TO CLAIM 14 WHICH WOULD SUPPORT AT LEAST ONE OF A PLURALITY WHICH WOULD NOT SUPPORT ADDING THAT TO CLAIM 17?

MR. BLOCK: CORRECT. I DON'T HAVE A SPECIFIC PART OF THE SPECIFICATION BUT IT CLEARLY DOES TALK ABOUT TRANSMITTING TO AT LEAST ONE OF.

THE COURT: BUT MY QUESTION IS, IS THERE SOMETHING IN THE SPECIFICATION THAT WOULD HELP ME SOLVE THE PROBLEM OF WHETHER THE PATENTEE DELIBERATELY LEFT AT LEAST ONE OUT OF 17 OR JUST ACCIDENTALLY OR WHETHER IT WAS NEVER INTENDED TO PUT IT IN?

MR. BLOCK: THERE'S NOTHING IN THE SPECIFICATION THAT WOULD TELL ME THAT, YOUR HONOR.

THE COURT: AND IS THIS A MINOR ERROR OR IN OTHER WORDS, DO YOU AGREE WITH COUNSEL THAT A DIFFERENT SCOPE WOULD BE INVOLVED IF IT IS TO AT LEAST ONE OF OR AT LEAST TO A PLURALITY?

MR. BLOCK: THAT WOULD BE A DIFFERENT SCOPE, YOUR HONOR, YES.

NOW, LET ME BE CLEAR, TOO, ABOUT THIS NOVO CASE. THE NOVO CASE WAS A CASE INVOLVING A COURT BEING ASKED TO CORRECT AN ERROR IN THE CLAIM.

IN THAT CASE THE CLAIM WITH THE ERROR IN IT WAS INDECIPHERABLE AND SO IT COULDN'T BE UNDERSTOOD AND SO IT WAS INDEFINITE.

NOW, THEY WENT TO THE COURT AND SAID, OKAY, WE HAD THIS MISTAKE, WE HAD THIS ERROR, COURT, PLEASE FIX THIS FOR US. AND THE FEDERAL CIRCUIT SAID IN THAT CASE THAT THE COURT CANNOT CORRECT THAT ERROR AND IT REMAINED INDEFINITE. WE'RE NOT ASKING THE COURT TO CORRECT THIS CLAIM.

WE'RE SAYING INTERPRET WHAT IT SAYS THE WAY IT IS BECAUSE IT'S UNDERSTANDABLE AND IT'S NOT INSOLUBLY AMBIGUOUS AND IT COULD BE UNDERSTOOD BY PEOPLE OF SKILL IN THE ART TO MEAN TRANSMITTING TO A PLURALITY OF SUBSCRIBER RECEIVING STATIONS.

THE COURT: WELL, YOU CLEARLY NEED ME TO STRIKE BECAUSE AT HAS A MEANING. DON'T YOU, BECAUSE YOU DON'T WANT THIS TO BE TRANSMITTING AT A PLURALITY OF USE?

MR. BLOCK: I'M NOT ASKING THE COURT TO STRIKE AT BECAUSE AT HAS A MEANING. IT HAS A

FUNCTION WORD TO SAY TO THE GOAL, DIRECTING SOMETHING TOWARDS SOMETHING IS AT. IT'S ONE OF THE MEANINGS OF AT AND SO THE WORD TO, OF COURSE, MEANS TO AND AT GENERALLY HAS THAT SAME MEANING.

THE COURT: UM --

MR. BLOCK: IT DOESN'T MEAN AT IN THE PAPERS THAT THE ROUND THREE DEFENDANTS WANT THE COURT TO INTERPRET THE WORD AT TO MEAN THAT THE TRANSMITTING OCCURS AT THE RECEIVING STATIONS MEANING THAT THE TRANSMISSION WOULD OCCUR FROM THE RECEIVING STATIONS TO THE, TO THE LOCAL DISTRIBUTION SYSTEM WHICH WOULD, WOULD BE TOTALLY INCONSISTENT WITH THIS PATENT. THE PATENT ALWAYS DESCRIBES INFORMATION FLOWING FROM, FROM A LOCAL DISTRIBUTION SYSTEM TO SUBSCRIBER RECEIVING STATIONS.

THE COURT: BUT AM I HEARING YOU CORRECTLY. YOU WOULD WISH ME TO LEAVE AT IN THERE AS A DELIBERATE TERM THAT THE PATENTEE INTENDED TO ADD MEANING TO THE CLAIM?

MR. BLOCK: IT'S IN THE PHRASE AND IT, IT IS THERE AND THAT'S THE WAY THE CLAIM WAS WRITTEN, THAT'S THE WAY IT WAS SUBMITTED AND, AND --

THE COURT: YOU'RE NOT ANSWERING MY QUESTION. YOU WANT ME TO INTERPRET THE CLAIM THAT

THIS IS A DELIBERATE TERM THAT ADDS MEANING TO THE CLAIM?

MR. BLOCK: YES.

THE COURT: AND YOU NEED AT BECAUSE IT ADDS MEANING?

MR. BLOCK: YES.

THE COURT: YOU'RE A BOLD MAN. VERY WELL.

MR. DORMAN: YOUR HONOR, TO RESPOND TO YOUR BOLDNESS COMMENT FOR JUST A MINUTE. MY UNDERSTANDING ABOUT HOW THIS WORKS IS THAT, IS THAT WE ARE NOT HERE ASKING FOR YOU TO REWRITE CLAIMS OR FOR YOU TO CORRECT ERRORS AND SO WE'RE NOT GOING BEFORE YOU TO TRY TO CORRECT AN ERROR.

THE COURT: YOU KNOW THAT'S DONE. I DON'T KNOW WHY YOU SHY AWAY FROM THAT. I HAVE HAD SEVERAL OCCASIONS WHERE I CORRECT TYPOGRAPHICAL ERRORS AND THERE'S NOTHING WRONG WITH THE COURT DOING IT AS LONG AS IT CAN RECOGNIZE IT AS A TYPOGRAPHICAL ERROR AND I HAVE SEEN ANOTHER ONE IN THE COURSE OF READING THESE PATENTS. AND IT'S AMAZING THAT THEY GO THROUGH THIS PROCESS AND THEY'RE THERE, BUT THEY'RE THERE.

SO WHY AREN'T YOU ASKING ME TO DO THAT?

MR. DORMAN: BECAUSE AS I SIT HERE, I

SUSPECT IT WAS AN ERROR BUT I DON'T KNOW IT WAS AN ERROR. THE APPLICANT MAY HAVE WANTED TO -- IT HAS TO BE -- I THINK IT'S -- I DON'T KNOW FOR CERTAIN.

BUT ALL I KNOW WHAT IS RELEVANT TO CLAIM CONSTRUCTION IS THAT THE LANGUAGE EVEN THOUGH IT'S AWKWARD AT AND TO IN THIS CONTEXT ARE SYNONYMS, THEY ESSENTIALLY MEAN THE SAME THING AND THEY DON'T CHANGE THE MEANING AND CONSEQUENTLY THIS CAN BE CONSTRUED AND IT'S NOT INDEFINITE.

THE COURT: OKAY. YOU'RE BRAVE, TOO. NEXT TERM.

MR. DORMAN: WE'RE DOWN TO THE NINTH INNING HERE. WE ONLY HAVE TWO TERMS LEFT.

PUT UP 274.

THE TERM SUBSCRIBER SELECTABLE RECEIVING STATIONS.

275. THE NEXT ONE.

THE ROUND TWO SATELLITE DEFENDANTS REALLY HAVE THE BURDEN HERE.

THE PARTIES DISPUTE WHETHER THE COURT SHOULD ADD A LIMITATION TO THE MEANING OF SUBSCRIBER SELECTABLE RECEIVING STATIONS. THIS IS YET ANOTHER INSTANCE WHERE THE DEFENDANTS ARE PROPOSING THAT YOU GRAFT ON A LIMITATION THAT WE CONTEND IS NOT IN THE CLAIM.